



West Norfolk
Academies Trust

Disciplinary Procedure Relating to Conduct for all Employees

Reviewed by: Trustees

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**Consulted, via e-mail, with recognised trade unions
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1. Terms of Reference

1.1 This policy applies to all employees of the West Norfolk Academies Trust.

1.2 Definitions:

- “Executive Headteacher” also refers to any other title used to identify the Executive Headteacher, where appropriate, or other senior manager delegated to deal with the matter by the Executive Headteacher.
- “Headteacher/Senior Manager” refers, where appropriate, to any other title used to identify the Headteacher/Senior Manager. The Headteacher/Senior Manager may only make a decision on matters of misconduct, unless expressly delegated to hear a case of potential gross misconduct by the Executive Headteacher.
- “Line Manager” refers to the person delegated to manage the employee. This may be a Senior Manager, other than the direct Line Manager.
- “Employee” refers to any employee, teaching and support, employed to work at the School.
- “Investigating Officer” refers to a senior manager or an external person appointed by the Headteacher or Executive Headteacher.
- “Companion” refers to a person chosen by the employee to accompany them at a formal meeting, who shall be a trade union representative or a workplace colleague. A companion is entitled to speak to the employee during any meeting, and confer privately, but may not answer questions on the employee’s behalf.
- “WNAT” or “Trust” refers to the West Norfolk Academies Trust.
- The Executive Headteacher may deal with a case where the Headteacher considers that they must act in the role of the senior manager. In this event, substitute ‘Executive Headteacher’ with ‘Headteacher’ throughout the procedure.
- “Trustees’ Disciplinary Committee” may be convened to deal with a case where the Executive Headteacher considers that they must act in the role of the senior manager. In this event, substitute ‘Executive Headteacher’ with ‘Trustees’ Disciplinary Committee’ throughout the procedure.
- “Trustees Appeal Committee” may be convened to hear an appeal against a written warning or dismissal. This will consist of three Trustees, including the Executive Headteacher, if they have not been involved in the disciplinary case being appealed.

2. Introduction

2.1 This Disciplinary Procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. The aim is to ensure consistent and fair treatment for all in the organisation.

2.2 Examples of the type of conduct that are considered to be misconduct or gross misconduct, which could lead to action under this Disciplinary Procedure, are set out in the Disciplinary Rules (Part C of this procedure) which apply to all employees.

2.3 This procedure is non-contractual and for guidance only. This procedure applies to all employees. It does not apply to agency workers or contractors.

2.4 This procedure may be implemented at any stage, as set out below, taking into account the alleged misconduct of an employee. Employees will not normally be dismissed for a first act of misconduct unless it is decided that it amounts to gross misconduct, or the probationary period is not complete.

2.5 In cases against the Executive Headteacher, the Chair of Trustees or a Committee of Trustees has the power to discipline or dismiss the Executive Headteacher in accordance with the procedure set out below.

3. Equality and Diversity

3.1 The procedure will be operated in accordance with the Trust's Equality Duty Statement and Objectives. The Trust is committed to developing, maintaining and supporting a culture of equality and diversity in employment. The impact of the procedure will be monitored in accordance with the Equality Act 2010.

PART A – Informal Procedure

4. Informal Action

4.1 Managers should seek to resolve minor misconduct informally and as soon as it occurs. Following an informal, fact-finding investigation, informal management advice may be given to the employee by a senior manager or a line manager. Action will be taken under the formal procedure set out in Part B below if the matter is not resolved or, there is repeated minor misconduct or, where informal action is not appropriate, for example because of the seriousness of the allegation.

4.2 There is no appeal against informal management advice given, which will not form part of the employee's disciplinary record, but should be confirmed in a written letter and will be kept in the employee's personnel file.

4.3 The written letter will set out the misconduct, the improvement that is required and, if appropriate, how this will be reviewed and during what timeframe. The employee may make a written comment on the letter if they have any objection to the informal action taken.

Part B - Formal Procedure

5. Investigation

5.1 Prior to any disciplinary action, allegations shall be promptly dealt with and carefully investigated, including obtaining statements from witnesses where appropriate. HR advice must be obtained from WNAT's HR provider, which will include advice as to how to conduct an investigation.

5.2 Employees may be required to attend a formal investigation interview. The investigating officer will write to the employee to inform them as soon as practicably possible, at least 5 working days in advance (please also refer to paragraph 5.3), setting out:

- The date, time and place of the investigation meeting
- The allegation/s and their possible consequences
- The employee's right to be accompanied by their companion

5.3 The notice period for the investigation interview can be reduced where all parties agree to such a reduction.

5.4 At the investigation interview the employee against whom allegations are made shall have the right to be informed of the nature of the allegations and to respond if they so choose. The investigation interview will be postponed once to allow for a trade union representative to attend and best endeavours will be made to agree a mutually agreeable time, date and location.

5.5 Investigation shall, where possible, be undertaken by a senior manager other than the Headteacher in order that the Headteacher is subsequently able to consider matters under informal action or formal disciplinary procedures without prior involvement.

5.6 Where there may be potential for a criminal investigation the schools investigation must only involve limited fact finding so as not to undermine any future police or Local Authority Designated Officer (LADO) investigation.

6. Disciplinary Hearing

6.1 If, following an appropriate investigation by the Investigating Officer, the Headteacher considers, based on the facts, that formal disciplinary action for misconduct is necessary, they will write to the employee to inform them as soon as practicably possible, at least 5 working days in advance, setting out:

- The date, time and place of the disciplinary hearing
- The allegation/s and their possible consequences
- The employee's right to be accompanied by their companion
- The titles of enclosed copies of any documents to be used as evidence
- The names of any witnesses to be called by the Headteacher.
- Their right to call witnesses on their behalf
- The name and position of any HR adviser who may accompany the Investigating Officer at the hearing
- The name and position of any HR adviser who will accompany the Headteacher at the hearing.
- The name and position of any note taker
- An extra copy of this notice, together with any enclosures, shall be provided for the employee's companion

6.2 In matters of gross misconduct the Executive Headteacher will take responsibility for the actions noted under section 6, unless the matter has been expressly delegated by the Executive Headteacher to a Headteacher/Senior Manager.

6.3 The employee must advise the Headteacher of the following, at least three working days in advance of the hearing of:

- The name and designation of their companion
- Provide any written documentation to be considered
- The names of any witnesses at that they wish to call
- Any special requirements (e.g. disability, language requirements)

6.4 At the disciplinary hearing, which will be chaired by the Headteacher, who will be supported by their HR Adviser, the employee (and their companion) will be given a reasonable opportunity to state their case, to question the Investigating Officer where possible and any witnesses and to call any witnesses and raise points about any information provided by witnesses.

6.5 Following the hearing, the Headteacher will consider the matter and confirm the decision in writing to the employee and their companion as soon as possible and usually within five working days of the hearing, to include:

- The sanction (if any) and the period this will remain current
- Their reasons for the decision
- The change in behaviour required (if relevant) and the likely consequences of further misconduct
- Right of appeal

7. Formal Disciplinary Action

First Written Warning

- 7.1** The Headteacher may give the employee a first written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months that is found justified after a disciplinary hearing, will lead to a final written warning unless there are mitigating circumstances. A first written warning will be held on the employee's personnel file for twelve months.

Final Written Warning

- 7.2** If a further complaint is made about the employee's conduct before the first written warning has expired, the same procedure (as in section 6 above) will be followed.
- 7.3** The Headteacher may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next 12 months that is found justified after a disciplinary hearing, may lead to dismissal unless there are mitigating circumstances. A final written warning will be held on the employee's personnel file for twelve months.

Dismissal

- 7.4** If a further complaint is received before the final written warning has expired, the complaint will be referred to a disciplinary hearing. The Headteacher must make the Executive Headteacher aware of the matter. The Executive Headteacher may delegate the disciplinary hearing to the Headteacher, or may choose to chair the disciplinary hearing in the place of the Headteacher. This hearing will be held following the same procedure as in paragraph 6 above. The chair may be accompanied by an HR Adviser.
- 7.5** If the meeting chair decides the complaint is justified, they may decide to dismiss the employee. The meeting chair will state the decision, the reasons and inform the employee of their right to appeal. Where the Headteacher has led the disciplinary hearing, the employee will have a right to appeal to the Executive Headteacher. Where the Executive Headteacher has led the disciplinary hearing, the employee will have a right to appeal to the Trustees' Appeal Committee. The meeting chair will confirm the decision and right of appeal in writing to the employee and their companion as soon as possible and normally within five working days of the disciplinary hearing. The Headteacher will record the outcome of their considerations and the names of persons present at the hearing.

8. Gross Misconduct

- 8.1** If the complaint is considered so serious that it may amount to gross misconduct, justifying dismissal without previous warning and without notice (see Disciplinary Rules, Part C of this policy), the employee may be informed by the Headteacher, Executive Headteacher or the Chair of Trustees that they are suspended on full pay pending further investigation of the complaint.
- 8.2** If, following an investigation, the Investigating Officer considers that the facts of the case amount to a prima facie case of gross misconduct, the matter will be referred to the Headteacher.

- 8.3** Where 8.2 above, applies and the employee is at risk of dismissal, the Headteacher must make the Executive Headteacher aware of the matter. The Executive Headteacher may choose to chair any disciplinary hearing in the place of the Headteacher.
- 8.4** Following the same procedure as in paragraph 6 above, if on the conclusion of the disciplinary hearing the meeting chair considers the complaint constitutes gross misconduct, they may decide to dismiss the employee without notice, or pay in lieu of notice.
- 8.5** Where a suspension has taken place that suspension may only be lifted by the Executive Headteacher or the Chair of Trustees, acting on behalf of the Trustees.

9. Suspension

- 9.1** Suspension under the Trust's Disciplinary Procedure is not in itself a disciplinary penalty. Suspension is necessary when the employer feels unable to keep the employee at work during the investigation into the alleged breach of discipline either because of the seriousness of the allegation, or because the employee's presence at work may hinder the investigation. The Executive Headteacher makes the decision as to whether suspension is appropriate, having undertaken a suspension assessment and taken advice from the Trust's HR provider.
- 9.2** It is recognised that a period of suspension is a stressful experience for any employee and it is important that support is available e.g. Trade Union, independent counselling and an agreed contact at the school in order to minimise any sense of isolation.
- 9.3** During a period of suspension, the employee will receive their usual contractual pay and should not attend work, nor make contact with pupils, parents, governors or members of staff without the Headteacher's authority. The employee will be given an appropriate named contact during the period of suspension.
- 9.4** The employee should, when asked, return any school property with which they have been issued. In any event, school property must not be used during a period of suspension, unless previously agreed.
- 9.5** If the employee becomes unwell whilst suspended, they must follow the school's procedure for reporting sickness absences and report their illness to their nominated contact person at the school. If the employee is certified by their GP as being unfit for work, they will be paid in accordance with their sick pay entitlement for that period of certification. The employee must also send in their sick certificates to the school.
- 9.6** If the employee has pre-booked any leave during the period of suspension, and are therefore not at home and not contactable, it is extremely important that they inform the Headteacher of the duration of the holiday period. Likewise, if they are not at their normal address whilst suspended they must inform the Headteacher of the alternative address and, if appropriate, alternative telephone number.
- 9.7** If it is decided not to proceed to a disciplinary hearing, the suspension will be lifted. Any remaining concerns regarding the investigation will be addressed with the employee. Arrangements will then be made for the employee to return to work.

10. Right of Appeal

- 10.1** The employee has a right of appeal against a decision to issue a warning or to dismiss.
- 10.2** Where the Executive Headteacher has not been involved with the disciplinary hearing, they may hear an appeal against a written warning or dismissal. Where the Executive Headteacher has been involved then a "Trustees Appeal Committee" may be convened to hear an appeal against a written warning or dismissal.

- 10.3** Appeals against formal written warnings (see paragraph 7.1 and 7.2) , or dismissal should be made in writing to the Executive Headteacher or Clerk to the Trustees as appropriate (see 10.2 above), stating the grounds for appeal in full, within 5 working days of the date of the written decision.
- 10.4** An appeal against a written warning (see paragraph 7.1 to 7.3) will be heard by the Executive Headteacher. Where the Executive Headteacher has been involved then a “Trustees Appeal Committee” will be convened to hear the appeal. An HR adviser may be present to support the person/s hearing the appeal. The person/s hearing the appeal may confirm the written warning, reduce a final written warning to a first written warning, or cancel the written warning.
- 10.5** An appeal against dismissal (see paragraph 7.4 to 7.5) will be to either the Executive Headteacher or the Trustees Appeal Committee (section 10.2). Any person/s hearing an appeal shall not have had any previous involvement in the case. An HR adviser may be present to support the person/s hearing the appeal.
- 10.6** All appeal hearings will be held as soon as possible and, in normal circumstances, within 10 working days after receipt of the appeal. The Clerk to Trustees will usually undertake administrative arrangements for any required hearing or meeting. The outcome will be confirmed in writing as soon as possible and usually within five working days of the hearing. There will be no further right of appeal.

11. Variation in Disciplinary Action

- 11.1** If appropriate, the Headteacher may decide to take informal action (see Part A) instead of giving a first written warning.
- 11.2** The Headteacher may decide the misconduct is so serious that it justifies a final written warning, without any previous written warning having been given.
- 11.3** Rather than dismiss, the Executive Headteacher may decide to issue no sanction or a lesser sanction.
- 11.4** In determining an appropriate sanction, consideration may be given to a change to role/duties, which may impact on remuneration.
- 11.5** Where the Executive Headteacher or Trustee’s Appeal Committee (as relevant) overturns a decision to dismiss or to issue a written warning, they may substitute a lesser sanction. There is no right of appeal against such a decision.
- 11.6** In the event that the Executive Headteacher or Trustee’s Appeal Committee (as relevant) decides not to uphold the decision to dismiss, the employee will be reinstated without loss of pay.

12. Trade Union Representative

- 12.1** Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee’s agreement.

13. Confidentiality

- 13.1** All employees subject to disciplinary investigations or proceedings must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

PART C – Disciplinary Rules

14. Disciplinary Rules

14.1 These disciplinary rules are intended to give examples of the type of conduct that is considered to be misconduct or gross misconduct, and which could lead to action under this disciplinary procedure. The below examples are a non-exhaustive list, and are designed to support the Trust’s Code of Conduct, which sets out the expected behaviours of adults associated with the Trust, and is available on the Trust’s website.

15. Examples of Gross Misconduct

15.1 Gross misconduct is a serious breach of contract. It includes misconduct that is likely to bring the Trust, or its schools, into disrepute, or otherwise harm WNAT’s reputation, or irreparably damage the working relationship between WNAT and its employee/s, resulting in a loss of trust and confidence in the relationship between the employee/s and the Trust. Employees suspected of committing an act of gross misconduct, may be suspended with full pay, pending investigation (Section 9). Gross misconduct will be dealt with under this disciplinary procedure and will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal). The following are examples of matters that are normally regarded as gross misconduct. This list is intended as a guide and is not exhaustive:

- Behaviour that has or may have harmed a child or student, or, behaviour towards a child, children or student that indicates you would pose a risk of harm to children and/or students. Child/children relates to anyone under the age of 18. Student relates to any person receiving education from WNAT. For example:
 - Sexual behaviour towards, or relations with, a student
 - Physically harming a student
 - Criminal offences related to or against a child
- Criminal activities or offences, whether committed at work or not, that may affect WNAT’s reputation or otherwise affects the employee’s suitability and/or ability to continue in employment.
- Sexual misconduct, whether at work or not and whether criminal or not.
- Acts of physical or threatened violence, vandalism, bullying or behaviour which provokes violence.
- Possession, use, supply or attempted supply of illegal drugs or any other inappropriate substances, whether illegal or not.
- Being under the influence of alcohol or other substances that make you unfit to perform your duties during working time or illegal use of drugs at any time.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material on Trust equipment, or during working time.
- Communicating offensive, obscene or unauthorised sexually explicit material whether verbally, written, in electronic communication, or by social media.

- Serious negligence, serious neglect of duties or a serious or deliberate breach of the employee's conditions of employment, operating procedures, public examination rules, DfE statutory requirements, statutory rules affecting your work or, Health and Safety rules, for example:
 - Failure to comply with the Prevent Duty;
 - Failure to report safeguarding concerns;
 - Failure to exercise proper control or supervision of pupils;
 - Disclosure of restricted public examination material or content;
 - Falsifying sickness absence;
 - Taking leave when permission has been denied;
 - Intentionally ignoring handling instructions/responsibilities/safety regulations to include those in relation to chemicals, machinery, equipment or food.
- A serious breach of the Trust's Code of Conduct.
- A serious act of insubordination.
- Dishonesty associated with place of work or job being undertaken, for example:
 - Theft, or unauthorised removal, or misuse of property.
 - Fraud, forgery or other dishonesty, including fabrication of expense claims, time sheets, qualifications, application forms, public examination forms and any other forms or records in use, falsification of any information given on the employee's application form for a post, fabrication of entitlement to work (including immigration status) in order to gain employment or other benefits or falsification of registration of pupils.
 - Demanding or accepting monies or other considerations as a bribe for the use of Trust property or provision of Trust service/s.
 - Failure to disclose criminal convictions, cautions, bindover orders reprimands or warnings (except those which are 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended from time to time) or, failure to disclose during the course of your employment an arrest or summons for an offence, a conviction, a bindover order, a reprimand or a warning given by a police force.
 - Undertaking unauthorised paid or unpaid employment during working hours, including during periods of sickness absence.
- Unauthorised use, or disclosure of, confidential information (or information which is of a confidential nature) or failure to ensure that such information in an employee's possession is kept secure.
- Making statements that are, or could be, damaging, slanderous or libellous whether verbally, written, in electronic communication or by social media. This includes statements that could be harmful to a pupil, an employee or other worker, a governor, a Trustee, a member of the public, or to WNAT's reputation.
- Unlawful harassment, discrimination or victimisation against a pupil, an employee or other worker, a governor, or a member of the public. This includes victimising a person who has raised concerns, made a complaint, given evidence or information under Trust policies, e.g. grievance procedure, disciplinary procedure or otherwise.

- Making a disclosure of false or misleading information under WNAT's Whistleblowing policy maliciously, for personal gain, or otherwise in bad faith against a person or, making untrue allegations in bad faith against a person.
- Bringing WNAT into serious disrepute.

16. Examples of Misconduct

16.1 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under the Trust's disciplinary procedure. This list is intended as a guide and is not exhaustive.

- Absenteeism and lateness, for example:
 - Unauthorised absence, including the employee leaving their job during working hours without permission, or sufficient cause for absence
 - Frequent failure to attend work punctually
 - Failure to comply with our sickness absence reporting procedure
- Neglect of duty, for example:
 - Failure to adopt safe working practices/use protective equipment where required by law or management
 - Damage to, or unauthorised use of, Trust property or contractor's property
 - Insubordination
- Obscene language or other offensive behaviour.
- Undertaking additional employment outside normal working hours without authorisation.
- Breaches of Trust policies.
- Breaches of the employee's contract.

PART D – Referrals to External Bodies

17. Referrals to External Bodies

17.1 At any point during a disciplinary procedure, where it is considered necessary by the Headteacher, School Designated Safeguarding Lead (DSL) or Executive Headteacher, a referral regarding a disciplinary matter may be made to the Local Authority Designated Officer (LADO).

17.2 Where there has been an allegation against an employee in which it is alleged that the employee has:

- Behaved in a way that has harmed a child, or may have harmed a child
- Possibly committed a criminal offence against or related to a child
- Behaved towards a child or children in a way which indicates they may pose a risk of harm to children (and therefore may be unsuitable to work with children)

a referral will be made to the LADO, and where a criminal activity is suspected the Trust or the LADO may refer the matter to the police.

- 17.3** Any internal investigation may be delayed whilst LADO authorisation is sought to pursue an internal investigation. Where this is the case, and it is possible, the employee will be informed of the referral and the reason for the delay. It may not be possible to do so in all cases. Paragraph 5.6 provides further information regarding investigating and LADO or police involvement.
- 17.4** At any point during a disciplinary procedure, where it is considered necessary by the Headteacher, School Safeguarding Lead or Executive Headteacher, a referral regarding a disciplinary matter may be made to the Disclosure and Barring Service (DBS).
- 17.5** Where there has been an allegation against an employee in which it is alleged that the employee has either:
- harmed or poses a risk of harm to a child or vulnerable adult
 - satisfied the harm test; or
 - received a caution or conviction for a relevant offence and;
 - the person being referred is, has or might in future be working in regulated activity and;
 - the DBS may consider it appropriate for the person to be added to a barred list
- a referral will be made to the DBS.
- 17.6** WNAT has a legal duty to refer an employee to the DBS if the Trust withdraws permission for a person to engage in regulated activity with children, or if it moves the employee another area of work that is not regulated activity.
- 17.7** Where there has been an allegation against an employee who is a teacher and the alleged misconduct is so serious that it warrants a decision on whether the teacher should be prevented from teaching, then a referral will be made to the Teaching Regulation Agency (TRA).
- 17.8** The above is a non-exhaustive list of external organisations to whom the Trust may make a referral to if it deems necessary and with due regard to the employee's right to confidentiality.
- 17.9** Referrals to external organisations may, and in most cases will, still be made whether the employee has been re-deployed, resigned, retired or left, or resigns when an allegation of harm to a student is first made.
- 17.10** Where any referral is made the employee will be informed in writing as soon as possible either before or following the referral, unless informing the employee of the referral could jeopardise an investigation. This decision will be made in conjunction with the relevant external body.